IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1920 OF 1998

Waman Laxman Chopade .. Petitioner

Versus

The Special Land Acquisition Officer No.19, Pune & Ors. .. Respondents

Mr.G.H.Keluskar for the petitioner

Mr.Y.B.Mullani, A.G./P. for respondent no.1 to 5

CORAM: A.P.SHAH & S.U.KAMDAR, JJ

DATED: 10TH SEPTEMBER, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J.):

1. In the present petition the petitioner is seeking a relief of publication of an award in respect of land of the petitioner which was a subject matter of acquisition and consequent payment of the compensation.

2. The petitioner owned a land admeasuring about 7 hectares 13 ares forming part of Gat no.137 situated at Village Ragegaon, Taluka Dound,

District Pune. In 1982 the respondent acquired a portion of land about 2 hectares 2 ares for the projects affected persons and an award was passed on 30th April 1982 in that behalf.

3. Sometime in or about 1st April 1985 a fresh notice of acquisition was issued to the petitioner seeking objection from the petitioner that why the further land of the petitioner should not be acquired for the project of canal. On 7th October 1985, petitioner has filed his objection . One of the objection raised by the petitioner is that his land should not be acquired because it is already acquired for project affected persons in 1982. However, it seems that inspite of objections raised the said land is acquired.

4. In 1987 a notice was issued u/sec. 12(2) of the Act for taking over the land for the purpose of project of canal. The petitioner contacted respondent authorities however, the petitioner was told that the issue of compensation is kept pending and the decision will be taken later.

5. It is the case of the petitioner that the petitioner has been making enquiries thereafter about the acquisition of his lands of 0.70 ares for the project of canal and payment of compensation thereof. However, the compensation has been withheld and has not been paid. It seems that thereafter the respondent took up the contention that no part of the land was acquired newly for purpose of canal since it has been constructed on the land which was acquired in 1982. The 7/12 extracts of the petition of land which is the subject matter of the petition indicates that the said land has been acquired by the authorities. The said extracts in fact contains an endorsement to that effect.

6. Thereafter by the letter dated 20th May 1997 and 16th July 1997 as well as by lawyer’s notice dated 7th October 1997 the petitioner called upon the respondents to make payment of the compensation amount. However, the since the same was denied by the respondents by communication dated 20th October

1997 the petitioner has filed the present petition.

7. The petition has been pending in this court since 1998 i.e. more than 6 years. The respondents has not bothered to file any reply to the present petition. After repeated adjournments for filing an affidavit an order was passed on 29th April 2003 by the Division Bench of this Court directing the respondents to file reply affidavit within 8 weeks from the said date. On the said date nobody appeared on behalf of the respondents state. Thus, the court further directed that the order dated 29th April 2003 to be forwarded to the Principal Secretary, Law and Judiciary Department to ensure compliance of the said order dated 29th April 2003. Today even after a period of one year 8 months the respondents have not filed any affidavit in reply.

8. In the aforesaid circumstances, we are left with no other option but to accept the contention of the petitioner as true and correct. However, on scrutiny we find that there is some evidence

produced by the petitioner in the form of notice. Further the 7/12 extracts in respect of portion of the said land which is annexed to the present petition indicates that there has been a fresh acquisition for the purpose of canal as the name of the Government has been brought on record in respect of the said additional area.

9. We have perused the letter dated 28th October 1997. However, the said letter dated 28th October 1997 is devoid of any details and thus it is not possible to accept the contention of the respondents in absence of an affidavit in reply to the present petition. Thus, we allow the present petition and direct the respondent to declare and publish an award in respect of the additional acquisition of land of 0.70 ares which has been sought to be acquired pursuant to the notice dated 1st August 1985 and pay the compensation for the same. We allow the petition accordingly with the aforesaid directions. However, there shall be no order as to costs.